



PUBLIC NOTICE

Federal Communications Commission
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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER FILED BY SHELBY COUNTY, ALABAMA TO OPERATE A TRUNKED PUBLIC SAFETY COMMUNICATION SYSTEM USING CERTAIN INDUSTRIAL/BUSINESS POOL FREQUENCIES IN THE 150-170 MHZ BAND AND TO OPERATE AT GREATER POWER THAN PERMITTED BY PART 90 RULES

File No. 0004776280

Comment Date: September 23, 2011

Reply Comment Date: September 28, 2011

The Public Safety and Homeland Security Bureau seeks comment on the application and waiver request, initially filed on June 22, 2011, by Shelby County, Alabama (the County or Shelby).¹ The County seeks waiver relief “Pursuant to Section 1.925 of the Commission’s Rules, 47 C.F.R. §1.925, ... to allow Shelby to become licensed for certain Industrial/Business Pool [I/B] frequencies.”² Specifically, Shelby seeks to use ten I/B frequencies, four FB8 and six MO8, respectively.³ Shelby’s frequency coordinator notes that “two Part 22 channels will be used as FB8’s to complete the frequency pairings” for its system and has been filed under File Number 0004567947.⁴ The County also seeks a waiver to operate at greater power than permitted by Part 90 rules, as described herein.

¹ See File No. 0004776280 (filed June 22, 2011, amended July 26, 2011 and August 12, 2011) and associated attachments “Request for Waiver Section 90.205(d)” (Waiver Request); *see also* Letter from Schulman Rogers, Gandal Pordy Ecker to David Furth, Deputy Chief, Public Safety and Homeland Security Bureau, (filed on Jan. 13, 2011) (Expedited Waiver).

² Expedited Waiver at 1. *See infra* note 3.

³ The I/B frequencies include the following: 159.6600, 152.9000, 160.0425, 160.1100, 159.8700, 159.9000, 151.5800, 152.9900, 159.9750, and 160.1250 MHz. FB8 and MO8 are types of station class codes. FB8 stands for Centralized Trunked Relay defined as a repeater operating within a centralized trunked radio system which has exclusive use of the designated frequency within a given geographic area. MO8 stands for Centralized Trunked Mobile defined as mobile or hand-held transceiver operating in a centralized trunked radio system within an exclusive geographic area. This designation is used between 150 - 512 MHz to indicate that the frequency corresponds to an exclusive trunked system. Shelby also applied for fourteen Public Safety Pool frequencies, but we are not seeking comment on those since Shelby County is eligible for those frequencies pursuant to 47 C.F.R. § 90.20(a).

⁴ See File No. 0004776280, attached Letter from Carol DiCaro, AFC Processor/Licensing Assistant, Association of Public-Safety Communications Officials-International, Inc. (APCO International), to Federal Communications Commission (filed July 26, 2011) at 1. We note that File No. 0004567947 is an assignment application of five Part 22 licenses to Shelby County. As of the date of this public notice, the application is in “consented to” status, and Commission staff made a notation, “Waiver of sec. 20.9(a)(6) granted” in the Commission’s Universal Licensing

Shelby states that “[b]ecause there is not sufficient VHF, public safety pool frequencies available” it “has identified certain Industrial/Business Pool frequencies currently licensed to, but not in use by, the Shelby County Board of Education.”⁵ In support of Shelby’s findings, Shelby submitted a frequency search from APCO stating that “there are no Public Safety VHF high band (150-170 MHz) frequencies available for assignment, except those [public safety frequencies] currently on the application.”⁶ Shelby states that it “is in the process of upgrading its radio system to a new five-site system that will provide improved communications capabilities to first responders throughout the county.”⁷ In addition, Shelby asserts that “[t]he system has been designed to provide on-street coverage, as well as, in-building coverage” but “[u]nfortunately, due to the height of our Location 2, Pelham, the ‘Safe Harbor Table’ would allow only 1.58 watts ERP [effective radiated power].”⁸ The County states that it “will be inadequate to accomplish the inbuilding coverage that is needed and desired” since “[c]alculations suggest that a minimum of 60 watts ERP will be required.”⁹ Therefore, the County seeks for a waiver of 90.35(a) and 90.205(d)(2) “to allow Shelby to become licensed for certain Industrial/Business Pool frequencies”¹⁰ and “permit 60 watts ERP on all three Part 90, FB8 channels.”¹¹

Consequently, Shelby “has contracted with Harris Corporation for the purchase of a VHF, P25, digital, trunked radio system which will support all Shelby County, Alabama first responders, public safety agencies and other essential government entity functions.”¹² The County also asserts that “[t]he total cost of the new system is over \$3,000,000.00” and that the “County Sheriff’s Department has received a Department of Justice COPS Technology Program grant for \$500,000.00 to purchase the P25 radios for the system and the Shelby County Commission has approved and budgeted the remaining funding for the project.”¹³

According to Shelby, “[t]he new, VHF, P25 system will be available for use by all Shelby County, Alabama public safety agencies and the following agencies have already committed to utilizing the system, the City of Alabaster Fire and Rescue, the City of Calera Police Department, the City of Chelsea Fire and Rescue, the City of Harpersville Police Department, the City of Vincent Police Department, the Shelby County 911 Center, the Shelby County Administration Office, the Shelby County

System on February 18, 2011. *See* File No. 0004567947. Therefore, we do not seek comment on File No. 0004567947.

⁵ Expedited Waiver at 1.

⁶ *See* File No. 0004776280, attached Letter from Carol Dicaro, AFC Processor/Licensing Assistant, APCO International, to Federal Communications Commission (filed on June 21, 2011).

⁷ Waiver Request at 1.

⁸ *Id.* Commission staff calculated a slightly higher allowable ERP of 1.76 watts for Location 2 by using the allowable ERP equation in 47 C.F.R. § 90.205(d), footnote 3, which states that: “[w]hen the actual antenna HAAT is greater than the reference HAAT, the allowable ERP will be reduced in accordance with the following equation: $ERP_{allow} = ERP_{max} * (HAAT_{ref} / HAAT_{actual})^2$.” Shelby’s Location 2 radius is 13 kilometers; ERP_{max} is 178 watts; $HAAT_{ref}$ is 178 meters; and $HAAT_{actual}$ is 151 meters.

⁹ Waiver Request at 1.

¹⁰ Expedited Waiver at 1. *See* 47 C.F.R. §§ 90.35(a), 90.205(d)(2).

¹¹ Waiver Request at 1.

¹² *Id.*

¹³ *Id.*

Board of Education, the Shelby County EMA and the Shelby County Sheriff's Department.”¹⁴ Shelby concludes that granting its “request would be in the best interest of general public.”¹⁵

In support of its waiver request, Shelby submitted a letter of concurrence (LOC) from “[Station] WPWW617, Shelby County Board of Education,” co-channel with each of the proposed I/B frequencies; “LOC’s to and from [Station] WNCL866, Alabaster Water Board for co channel [frequency] 159.870 [MHz];” and an LOC from Station WNUS292, Town of Vincent, Alabama.¹⁶

As a part of the analysis under the Commission’s waiver criteria, we also seek comment on whether the 700 MHz public safety band would provide a viable alternative, particularly since the digital television transition date has passed, and in light of the Commission’s actions facilitating a nationwide, interoperable public safety network.¹⁷ Shelby states that it “investigated using 700 MHz public safety pool frequencies but determined that a 700 MHz system would require more tower sites, thereby making a 700 MHz system logistically and financially unfeasible.”¹⁸ Notwithstanding the County’s position on the 700 MHz band, we seek comment, in particular, from other interested parties, on whether Shelby could upgrade its radio trunked system and improve interoperability by using frequencies in the 700 MHz public safety band, rather than upgrade using I/B frequencies.

We further note that the Commission requires private land mobile radio licensees in 150-174 MHz and 450-512 MHz to transition from 25 kHz to 12.5 kHz technology by no later than January 1, 2013.¹⁹ Shelby holds four licenses in the 150-174 MHz band; call signs KJC962, and KIT236 are currently operating in wideband mode and narrowband mode, while call signs WPXF230 and WQCP379 are currently operating in narrowband mode. However, we note that the County’s proposed frequencies are narrowband.²⁰ Should the Commission consider the applicant’s current progress in achieving this requirement or other measures of spectrum efficiency when determining whether or not the public interest supports assigning non-public safety spectrum to a public safety entity under rule Section 1.925?

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ See File No. 0004776280, attached Letter from RS/AAA to Federal Communications Commission (filed on June 22, 2011); Letter from Pete Lucas, Manager, Alabaster Water Board to Sheriff Chris Curry, Shelby County Sheriff’s Office (dated June 14, 2011); Letter from Randy Fuller, Superintendent, Shelby County Schools to Shelby County Alabama, Attn: Phil Burns (dated June 20, 2011); and a Letter from Max A. Roper, Communications Liaison, Town Of Vincent Police Department to Shelby County AL, Attn: Phil Burns (filed August 12, 2011).

¹⁷ See Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229; Development of Operational, Technical and Spectrum Requirements for Meeting Federal State and Local Public Safety Communications Requirements through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007). See also Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 14301 (2008); *Second Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8047 (2008).

¹⁸ Expedited Waiver at 1.

¹⁹ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, *Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004). See also 47 C.F.R. §§ 90.209(b)(5)-(6).

²⁰ See File Number 0004776280.

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this *Public Notice*. All comments and reply comments should reference the subject Waiver Request and the DA number indicated on this *Public Notice*. Comments may be filed: (1) electronically by accessing the applicant's file number(s) in the Commission's Universal Service Licensing System (ULS),²¹ or (2) by filing paper copies.

- Electronic Filers: Parties may submit pleadings electronically as follows:

From the ULS website at <http://wireless.fcc.gov/uls/>, begin the process of submitting a pleading by clicking on the "ULS Pleadings" link in the menu on the lower left side of the ULS web page. The link will take you to the "*Pleading Information*" screen for "Non-docketed Pleadings" where you select "Reply" in the drop-down window for the type of pleading and then enter the pleadings filer information. Completion of the contact information is optional. Upon completion of this screen, please note the instructions for the filing: "*Pleadings must be dated and must include a signature, in this instance an electronic signature, and the address and phone number of the signing party.*"²² Click on "CONTINUE."

The second step is to complete the *File Numbers/Call Signs* screen. Click if the pleading pertains to a File Number or Call Sign and enter the File Number or Call Sign. Please note that you must enter a File Number or Call Sign to continue. If the pleading pertains to multiple applications or licenses, you must enter each File Number or Call Sign as appropriate. After clicking the "SUBMIT" button, the screen will update to show all the File Numbers/Call Signs associated with the pleading. At this time, you may delete selected File Numbers/Call Signs from the page before continuing.

The third step is to complete the *Attach File* screen to attach the pleading document. Use the drop down box to select Pleading or Confidential Pleading. The "BROWSE" button opens a file upload window where you will locate and select your pleading file. The Description field allows you to enter a brief description for the pleading. Click the "ADD ATTACHMENT" button to upload your pleading. You may submit up to thirty files for each pleading but each file must be smaller than 10 MB in size. You also have the opportunity to delete any selected file from the pleading.

Finally, to complete your electronic pleading submission, click on the "SUBMIT PLEADING" button and the *Confirmation* screen will be displayed. The *Confirmation* screen will display your Confirmation Number as well as your entered pleadings information. You may print this page for your records by selecting the Print Page link at the top of the page and have the option of submitting another pleading or returning to the ULS website by selecting a link at the bottom of the page.

The ULS Application and License Search results will display pleadings under the ADMIN tab when a comment or reply comment has been filed. Users can view the pleading by clicking on the link for the specific comment or reply comment in the Description field. The general public will not be able to view confidential pleadings.

For additional information or assistance on how to file a comment or reply comment or other relevant pleading, you may visit the Web at <http://esupport.fcc.gov>. You may also call the FCC ULS

²¹ See "Wireless Telecommunications Bureau Enhances the Commission's Universal Licensing System to Implement Electronic Filing for Pleadings," *Public Notice*, 21 FCC Rcd 424 (WTB 2006). See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-125A1.pdf.

²² See 47 C.F.R. Part 1.

Customer Support Center at (877) 480-3201 and select option 2, or (888) 225-5322 and select Option 2, or (717) 338-2888. For TTY, please call (717) 338-2824. Assistance from the FCC ULS Customer Support Center is available between the hours of 8 a.m. to 6:00 p.m. Eastern Time, Monday through Friday (except Federal holidays). To provide quality service and ensure security, all telephone calls to FCC ULS Customer Support Center are recorded.

- Paper Filers: Parties who choose to file by paper must submit an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours at this location are 8:00 a.m. to 7:00 p.m. **PLEASE NOTE:** The Commission's former filing location at 236 Massachusetts Avenue, NE is permanently closed.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

The application(s), waiver request, and comments and reply comments can be accessed electronically via the Commission's Universal Licensing System, <http://wireless.fcc.gov/uls>. The full text of the Waiver Request, comments and reply comments will be available for inspection and duplication during regular business hours in the FCC Reference Information Center (RIC) of the Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554. Copies may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its web site, <http://www.bcpweb.com>, by email at fcc@bcpweb.com, by phone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563. For further information regarding the public reference file for this waiver request, contact Lisa Williams, RIC, (202) 418-1352.

Because of the policy implications and potential impact of this proceeding on persons not party to these Applications, it is in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. See Sections 1.1200(a) and 1.1206 of the Commission's rules, 47 C.F.R. §§ 1.1200(a) and 1.1206. Therefore, subsequent to the release of this *Public Notice*, *ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed, but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact Mr. David Siehl of the Policy Division, Public Safety and Homeland Security Bureau at (202) 418-1313 (voice), (202) 418-7233 (tty), or via e-mail to David.Siehl@fcc.gov.

By the Chief, Public Safety and Homeland Security Bureau.

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